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DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the working group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Chairman-Rapporteur: Mr Carlos Vargas Pizarro (Costa Rica)

Chairman of the drafting group: Ms. Ann Marie Pennmegard (Sweden)

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Introduction

1. The Commission on Human Rights, in its resolution 1997/24 of 11 April 1997, took note of the report of the working group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1997/33 and Add.1) and requested the working group to meet between sessions, for a period of two weeks prior to the fifty-fourth session of the Commission in order to continue its work, with a view to completing expeditiously a final and substantive text, and to report on its work to the Commission at that session.

2. The Economic and Social Council, in its resolution 1997/49 of 22 July 1997 authorized an open-ended working group of the Commission to meet for a period of two weeks prior to its fifty-fourth session.

3. Consequently, the working group held its sixth session from 13 to 24 October 1997. It was opened by the United Nations High Commissioner for Human Rights, Ms. Mary Robinson, who made an introductory statement.

I. ORGANIZATION OF THE SESSION

A. Election of officers

4. At its 1st meeting, on 13 October 1997, the working group elected Mr. Carlos Vargas Pizarro (Costa Rica) as Chairman-Rapporteur. On his proposal Ms. Ann Marie Pennegard (Sweden) was elected as Chairman of the drafting group.

B. Attendance

5. Representatives of the following States members of the Commission on Human Rights attended the meetings of the working group, which were open to all members of the Commission: Algeria, Argentina, Austria, Brazil, Bulgaria, Canada, Chile, China, Cuba, Czech Republic, Denmark, Dominican Republic, Egypt, El Salvador, Ethiopia, France, Germany, Italy, Japan, Mexico, Netherlands, Philippines, Republic of Korea, Russian Federation, South Africa, Sri Lanka, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

6. The following States non-members of the Commission on Human Rights were represented by observers at the meetings of the working group: Australia, Costa Rica, Croatia, Estonia, Finland, Guatemala, Jordan, Morocco, New Zealand, Norway, Peru, Poland, Romania, Saudi Arabia, Slovakia, Spain, Sudan, Sweden, Syrian Arab Republic and Turkey.

7. The Holy See and Switzerland were also represented by observers.

8. The International Committee of the Red Cross and the following non-governmental organizations were represented by observers at the meetings of the working group: Amnesty International, Association for the Prevention of Torture, Center for Justice and International Law, Human Rights Watch, International Commission of Jurists, International Federation of ACAT (Action

of Christians for the Abolition of Torture), International Federation of Human Rights Leagues, International Rehabilitation Council for Torture Victims, the International Service for Human Rights and Women's International League for Peace and Freedom.

9. The Committee against Torture was represented by an observer.

C. Documentation

10. The working group had before it the following texts and documents:

E/CN.4/1997/WG.11/1	Provisional agenda
E/CN.4/1997/33 and Add.1	Report of the working group to the Commission on Human Rights at its fifty-third session
E/CN.4/1996/28 and Corr.1	Report of the working group to the Commission on Human Rights at its fifty-second session
E/CN.4/1997/WG.11/CRP.1	Comments provided by the Government of Finland
E/CN.4/1997/WG.11/CRP.2	Comments provided by the Government of Cuba
E/CN.4/1996/WG.11/WP.1	Working paper submitted by the Secretariat pursuant to Commission on Human Rights resolution 1996/37
E/CN.4/1996/WG.11/WP.2	Working paper submitted by the Secretariat pursuant to Commission on Human Rights resolution 1996/37 (Comments provided by the Governments of Argentina and Switzerland)
E/CN.4/1991/66	Letter dated 15 January 1991 from the Permanent Representative of Costa Rica to the United Nations Office at Geneva addressed to the Under-Secretary-General for Human Rights

The text of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and an explanatory note by the Council of Europe.

The text of the Inter-American Convention to Prevent and Punish Torture.

D. Organization of work

11. At its 1st meeting, on 13 October 1997, the working group adopted its agenda, as contained in document E/CN.4/1997/WG.11/1.

12. The Chairman-Rapporteur made an opening statement, expressing the hope that the drafting process would be swiftly concluded. He stated that an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment would extend and amplify the obligations to which States Parties had already committed themselves, with a view to the ultimate elimination of the scourge of torture. He further stated that the group of appointed experts would make visits on an ongoing basis, in confidential cooperation with the States concerned.

13. He proposed that the working group continue with the second reading of the draft optional protocol by using last year's approach, in other words, to re-establish an open-ended drafting group, which would present the outcome of its negotiations and agreed proposals on draft articles to the working group in plenary meetings. He suggested that the working group continue in numerical order with the reading and examination of the articles as contained in document E/CN.4/1996/28.

14. The representative of Cuba, on a point of procedure, suggested that all the articles should be reviewed as a whole and that, eventually, articles 1 and 8 could be given priority.

15. The Chairman-Rapporteur of the working group, however, insisted that as a main rule chronological order should be followed, beginning where the working group left off last year, i.e. with articles 6 and 7, and that, in the interest of saving time, articles 1 and 8 would be reviewed at a later time.

16. The observer for the Committee against Torture was invited to address the working group on what he considered to be relevant issues at the second reading. He attended meetings on 16 and 17 October and made statements that are reflected in relevant parts of the report. Mr. Nigel Rodley, the Special Rapporteur of the Commission on Human Rights on the question of torture, informed the Secretariat that he would not be available to participate in the session and suggested that the paper he prepared last year, if still pertinent, be circulated again among the participants. In that regard, the attention of the working group was drawn to paragraphs 18 to 21 of the 1996 report, reflecting his views on pertinent issues.

17. At its 3rd plenary meeting, on 14 October 1997, after consideration and adoption of article 9 and following the proposal of the Chairman-Rapporteur to examine consolidated articles 10 and 11, the representative of the Netherlands suggested that numerical order be interrupted and that the working group should proceed to consider articles 16 onwards in order to narrow their differences before tackling outstanding difficult issues. The working group agreed to this proposal.

18. The articles as they appear in annex I to the present report have been renumbered in accordance with what was adopted at the present session; the numbering in the body of the report coincides with that used in the discussions held in plenary meetings.

II. CONSIDERATION AND DRAFTING OF PARAGRAPHS AND ARTICLES OF THE DRAFT OPTIONAL PROTOCOL

A. Article 6

19. At the 1st plenary meeting, on 13 October 1997, the Chairman-Rapporteur of the working group invited delegations to discuss article 6 (see E/CN.4/1996/28, annex I, for the text of the outcome of the first reading) and drew the attention of the working group to the comments provided by the Government of Finland in E/CN.4/1997/WG.11/CRP.1.

20. The representative of Cuba expressed the view that article 6 should not specify the number of times that a member of the sub-committee would be eligible for re-election, arguing that such limitations were not laid down in other conventions. Therefore, the bracketed words "once" and "twice" should both be deleted. Her proposal was supported by the representative of the Netherlands, who added that he would be open to any reasonable solution. The representative of the Dominican Republic supported the representative of Cuba, but suggested that a re-elected member might be allowed to stand again for re-election after a certain time. This new proposal was endorsed by the representative of Cuba, who had no objection to a limit being placed on the number of terms to which an expert could be elected. A balance was needed between the need for renewal and the need for experience and the proposal of the representative of the Dominican Republic was a good compromise.

21. In contrast, the representatives of Brazil and Canada and the observers for Australia, Sweden and Switzerland and the observer for the Association for the Prevention of Torture preferred to limit the re-election of experts to once. The observer for the Association for the Prevention of Torture stated that States Parties to other conventions regretted the absence of limitations with regard to the number of times that a committee member could serve. She was of the opinion that an expert could become stale with time. The representative of China stated that her delegation was in favour of establishing certain limits for re-election. Although it was necessary to maintain continuity in the Subcommittee, limitations could be imposed in the interest of diversity. However, strict limitations might impair the work of the Subcommittee.

22. At its reconvened 2nd plenary meeting, on 13 October 1997, the Chairman-Rapporteur of the drafting group reported that the drafting group had decided that members of the Subcommittee "shall be eligible for re-election once if renominated". It was felt that this would ensure a balance between continuity and the need for diversity.

23. Article 6 was adopted (see annex I, article 9).

B. Article 7

24. At the 1st plenary meeting, on 13 October 1997, the Chairman-Rapporteur of the working group opened the general discussion of article 7.

25. The observer for Sweden expressed the view that the rules of procedure referred to in paragraph 2 of article 7 should apply also to the missions of

the Subcommittee. She suggested adding a subparagraph stating that the rules of procedure shall also be applied, mutatis mutandis, to delegations of the Subcommittee on missions.

26. The observer for Switzerland stated that he was not convinced of the necessity of this kind of wording, but that he could go along with the observer for Sweden.

27. It was decided not to include the Swedish proposal in the text of the article. However, it was recommended that the Subcommittee should be advised to take the proposal into account in drafting its rules of procedure.

28. The representative of China stated that the bracketed words "the Committee against Torture and" should be deleted from paragraph 4 of article 7.

29. At its reconvened 2nd plenary meeting, on 13 October 1997, the Chairman of the drafting group reported that the drafting group had decided, by consensus, that the contents of the brackets in paragraphs 1, 3 and 4 should be deleted. Paragraph 2 would remain as it stood. Regarding paragraph 4, the relationship between the Committee and the Subcommittee had not yet been completely agreed upon and a review of the paragraph might become necessary at a later date in order to ensure consistency.

30. Article 7 was adopted (see annex I, article 10).

31. At the 4th plenary meeting, on 14 October 1997, the working group decided to delete paragraph 4 of article 7 as it was felt to be redundant, since paragraph 2 of article 16 referred to the same issue.

C. Article 9

32. At its 2nd plenary meeting, the Chairman-Rapporteur invited the working group to begin consideration of article 9.

33. With respect to paragraph 1, the delegations of Australia, Brazil, France, the Netherlands, Sweden, Switzerland and the United States of America expressed their preference for the bracketed word "may" over "shall".

34. With respect to paragraph 3, the delegations of Australia, the Netherlands, Sweden, Switzerland and the United States of America expressed their preference for the bracketed word "preclude" over "exempt".

35. Also with respect to paragraph 3, the delegations of France, the Netherlands, Sweden and the United States of America suggested that the bracketed paragraph at the end of paragraph 3 should be deleted. The delegations of Brazil, Denmark, Egypt and France insisted that any duplication of work should be avoided.

36. With respect to article 9, the representative of Cuba stated that it was important to emphasize the importance of a consultative relationship between

the Subcommittee and States Parties, taking also into account the principle of confidentiality. The representative of Egypt reiterated the importance of consultation.

37. At its 3rd plenary meeting, on 14 October 1997, the Chairman of the drafting group reported that the drafting group had agreed to the text of article 9.

38. At the same meeting, the representative of Cuba stated that, as article 9 established obligations for both the Subcommittee and the State Party and, as such, would be linked to articles 1 and 8, she reserved the right to make relevant observations in that regard in the future.

39. Article 9 was adopted (see annex I, article 11).

D. Consolidated articles 10 and 11

40. At its 6th plenary meeting, on 15 October 1997, the Chairman-Rapporteur of the working group opened the general discussion on consolidated articles 10 and 11.

41. The representative of the Netherlands expressed the view that the text had become confusing and proposed that the working group revert to consideration of the original text, as proposed by the Government of Costa Rica (see E/CN.4/1991/66). The representatives of Brazil, Denmark and Germany supported this view.

42. The representative of Cuba stated that the present negotiations should be based on the text constituting the outcome of the first reading as it reflected the evolution of those articles in the working group's discussions.

43. The representative of Brazil was of the opinion that the Subcommittee should have the right to select any experts suggested to it and that States should also have the right to reject experts without explanation.

44. The representative of Germany proposed that members of the Subcommittee should be considered separately from experts and interpreters.

45. The representative of China stated that she was not opposed to simplicity, but that the text should retain all the basic principles contained in the consolidated text. It was hoped that the text proposed by China would be considered (see E/CN.4/1996/28, annex II).

46. At its 7th plenary meeting, on 16 October 1997, the observer for Sweden submitted a proposal to the working group on article 10, having taken into account the various proposals on consolidated articles 10 and 11 submitted at its earlier sessions, the discussions held on the issues, and the original text as submitted to the Commission on Human Rights by the Government of Costa Rica in 1991. She explained that her proposal contained the "general rule", proposed in the original draft proposal of Costa Rica, that missions would be carried out by at least two memebers of the Subcommittee; a method by which a "transparent" roster of experts would be established; a safeguard ensuring the integrity and impartiality of experts; and stipulating that

experts were subordinate to the Subcommittee and that, as an exceptional prerogative, a State Party could prohibit an expert or interpreter from taking part in a mission to territory under its jurisdiction.

47. The delegations of Australia, the Czech Republic, Egypt, the Netherlands, Norway, Switzerland and the United Kingdom agreed that the proposal of the observer for Sweden could serve as a good basis for negotiations in the drafting group. Some of these delegations made suggestions for modifications, including regulating modalities and obligations, fixing a ceiling on the number of experts allowed to take part in a mission, allowing the State Party whose territory a mission would visit to send one of its nationals to participate in the preparation of the mission, stipulating that experts assisting the Subcommittee should not undertake any missions by themselves under the optional protocol and the mandatory inclusion of women on missions.

48. The representative of China also submitted a proposal to the working group on articles 10 and 11. She stressed that the number of experts should be limited and that experts should be used only in exceptional cases after permission had been obtained from the State concerned. Experts proposed by the State Party to be visited should be considered on a priority basis when selecting experts from the list. Regarding the Swedish proposal, paragraph 3 should be deleted and the sentence "They shall in no case undertake any missions by themselves under the present Protocol" should be added to paragraph 5.

49. The representative of Mexico was flexible on the question of whether to use the Swedish proposal as a basis for work on consolidated articles 10 and 11. The sovereignty of States could not be limited and the State concerned should be able unconditionally to refuse permission for any expert assisting the Subcommittee. The representative of Cuba supported his position.

50. At the same plenary meeting, the observer for the Committee against Torture was asked by the Chairman-Rapporteur to comment on the articles under discussion. He shared his experience as a member of the European Committee for the Prevention of Torture, which had carried out between 70 and 80 visits during the past eight years. At least two members of that Committee had taken part in visits, always with the assistance of experts who rendered technical assistance and had no political influence; usually there were four or five members accompanied by two to three experts. He emphasized that specialized knowledge would be required for visits to detention centres housing young offenders and mental health facilities for psychiatric patients. It had not always been possible for the European Committee to find interpreters from among persons other than nationals of the State receiving a visit. Notification of the visit, which included a list of members, experts and interpreters, had not given rise to problems in practice and anyone could propose an expert, who would be selected by the missions themselves according to their requirements. He stressed that if the State concerned wished to exclude any expert from a mission, the State's refusal must be given confidentially. The Committee against Torture had made one visit under article 20 of the Convention against Torture, comprising two members and four experts and members of the Secretariat.

51. At its 8th plenary meeting, on 20 October 1997, the Chairman of the drafting group reported that the drafting group had decided to draft a simpler text. After informal negotiations had taken place during which several proposals had been tabled, delegations had agreed to the texts of paragraphs 3 to 5 and had nearly reached an agreement on the first two paragraphs. Following a short recess, the Chairman of the drafting group submitted the full text of article 10 to the working group. She reported that the drafting group had also discussed placing in an annex to the report of the working group recommendations concerning the importance of maintaining a regional and gender balance which it felt the Subcommittee should take into account when drafting its rules of procedure

52. The representative of China was of the view that the article as presented by the Chairman of the drafting group was incomplete because proposals made by her delegation and by the Swedish delegation on the roster of experts to be submitted by States Parties to the Subcommittee were missing. Moreover, it was important for the State Party concerned to be able not only to oppose the inclusion of a specific expert in a mission, but also to express its objection to the number of experts. She pointed out that the participation and cooperation of the State Party concerned were vital for the effectiveness of the mission.

53. The Chairman of the drafting group explained that the recommendations she had referred to would deal with specific aspects of the optional protocol and would include a recommendation on transparent procedures for compiling a list of experts. She also stated that provision for consultation had been made in the text of the article, thereby giving the State Party concerned a greater say in the mission; the issue of a roster had therefore not been included in the text.

54. The representative of Cuba advocated very clear recommendations, including specific quotas, in order to allay the concerns raised. The representative of China stated that discussion on the issue had not been exhaustive and that she would prefer that the matter be dealt with in the body of the optional protocol.

55. The representative of the Netherlands suggested that the working group adopt article 10 as submitted by the Chairman of the drafting group. The matter of a roster of experts could subsequently be dealt with in a new article 10 bis. His suggestion was supported by the representative of Germany.

56. Before the adoption of article 10, the representative of China made a statement as follows: "Firstly, paragraph 3 of article 10 reflected to some extent my delegation's concerns relating to paragraph 1 concerning the number of experts. With that understanding, my delegation accepts this paragraph. Secondly, the adoption of article 10 in no way influences the future negotiations on articles 1 and 8".

57. Article 10 was adopted (see annex I, article 13).

E. Article 10 bis

58. At the 10th plenary meeting, on 22 October 1997, the Chairman-Rapporteur of the working group opened the general discussion on new article 10 bis. The representative of China introduced a proposal on article 10 bis, which was a compromise text. The proposal contained several elements which she wished to stress. These were: no more than five experts could be proposed by each State Party; they shall be nationals of States Parties to the optional protocol; the roster of experts must be geographically balanced; and a reference would be made in the text to article 5.

59. The observer for Switzerland felt that if States Parties did not have an obligation to propose experts there would be too few experts available to the Subcommittee. He proposed the addition of a reference to article 4 which dealt with criteria.

60. The representative of Cuba stated that as States Parties were responsible for the functioning of mechanisms in which they participated, the experts proposed by States Parties must be nationals of those States. If the list of experts was insufficient, the Subcommittee could request experts from the specialized agencies.

61. The representative of Germany felt that a more precise reference to article 5, in particular to paragraph 2, should be made. The representative of Cuba suggested an amendment to this proposal in the form of a reference to the principles of admissibility contained in articles 4 and 5.

62. The observer for Sweden stated that it should be made clear that the Subcommittee would be able to use experts who had not been proposed by States Parties in the interest of ensuring the best qualified expertise and also that missions would not have to be postponed because experts were unavailable. This view was supported by the observer for Finland.

63. The observer for Australia suggested that the roster not be limited to nationals of States Parties, that a reference to article 4 was not necessary, and that experts could be proposed by United Nations bodies, notably the Office of the United Nations High Commissioner for Human Rights, the Crime Prevention and Criminal Justice Division and the specialized agencies. The representatives of Chile and South Africa and the observers for Switzerland and Amnesty International supported the proposal. The representative of South Africa, however, cautioned against "over-defining" experts. This view was shared by the representative of Chile. The observer for Amnesty International felt that nationality was irrelevant since they were not State representatives; the focus should be on their expertise.

64. The representative of the United States of America said that the roster should not be limited to experts chosen by Governments because the experts should not be perceived as being political appointees.

65. The representative of Mexico suggested that the roster of experts could be broadened by allowing nationals of all States Parties to the Convention against Torture to be proposed and that when the roster was not sufficient to

cover the needs of the Subcommittee, a selection could be made from staff of United Nations specialized agencies. The representative of Germany noted that discussion was needed on how the list might be revised.

66. At the 12th plenary meeting, on 23 October 1997, the working group adopted the text of the article (see annex I, article 14).

F. Article 12

67. At the 8th, 9th, 10th and 12th plenary meetings, on 20, 21, 22 and 23 October 1997, the Chairman-Rapporteur invited delegations to discuss article 12.

68. The representative of the Netherlands pointed out that the article under discussion dealt with operational guidelines and not with questions of principle and, as such, should neither contain too many details nor refer to the issue of prior consent to receive missions.

69. The representative of Egypt proposed deleting the brackets around the first sentence of paragraph [1.6] and retaining the text. The second sentence, also in brackets, could also be deleted. The representative of China expressed full support for the proposal, stating that nothing should interfere with State sovereignty.

70. The observer for the Association for the Prevention of Torture favoured a text drafted in language as close as possible to that of article 12 in the original Costa Rican draft of 1991. He pointed out that article 12 would be one of the cornerstones of the new instrument and would allow the Subcommittee to gain a full and clear understanding of the situation in the country visited, without which no helpful recommendations could be made. As a matter of principle, the visiting delegation must have the rights to travel without restriction to any place of detention, to unlimited access to such places, and to interview detainees without witnesses. Legitimate interests of States to restrict visits should be addressed in article 13. He also cautioned against lowering existing international humanitarian standards which had been unconditionally accepted by States in times of war, such as the Third and Fourth Geneva Conventions. He opposed the granting of such rights in accordance with national laws, because every country had laws limiting access to detainees and providing, at least for certain categories of persons, that visits must be supervised. If such laws were to apply to the Subcommittee, the very purpose of the optional protocol would be jeopardized. The representatives of South Africa and Germany and the observers for Sweden and Switzerland and of Amnesty International endorsed these comments.

71. The representative of South Africa expressed the view, supported by the representatives of Canada and Italy, that it was an affirmation of State sovereignty to allow visits to places of detention.

72. The observer for Amnesty International was of the opinion that article 12 has one of the most essential articles and that the preventive effect of the optional protocol could only be maximized if the Subcommittee was able to visit all or any part of any detention facility and speak privately with detainees.

73. The observer for the International Committee of the Red Cross stated that access to all places and persons, together with the possibility of private talks and repeated visits, were essential conditions for a visit by his organization. These modalities were already reference standards which, if not respected, would compromise the mission.

74. The representative of South Africa expressed concern about the reference in paragraph 1 to national laws and regulations. He stated that there needed to be more flexibility. This view was supported by the representatives of Argentina, Brazil, Denmark, France, Germany, United States of America and Uruguay and by the observers for Australia, Finland, Norway, Sweden and Switzerland and of Amnesty International. The general feeling was that this paragraph should be omitted as national laws could constrain the work of the Subcommittee. The primary aim of the optional protocol was to maintain international standards; it therefore lay outside the domestic sphere.

75. The representatives of China, Cuba and Egypt expressed the opinion that national laws must be respected. The representative of China emphasized that that was necessary to ensure the cooperation between States Parties and the Subcommittee that was needed.

76. The observer for the International Committee of the Red Cross stated that on its visits national laws were respected, although certain restrictions would be removed by the State concerned to allow the ICRC to fulfil its mandate effectively.

77. The observer for Sweden proposed that the drafting group return to the original version of article 12 as proposed by Costa Rica. This view was supported by the representatives of Argentina, Brazil, Canada, Denmark, Dominican Republic, France, Italy, South Africa, Uruguay and the observers for Australia, Finland, Norway and Switzerland and for Amnesty International and the International Committee of the Red Cross.

78. The representative of Mexico was of the opinion that the working group should use the text from the outcome of the first reading as the basis for discussion. The representatives of China and Cuba supported this view, but were not opposed to considering both texts in the drafting group.

79. At the 10th plenary meeting, on 22 October 1997, the Chairman of the drafting group reported on the drafting group's attempt to finalize article 12. The drafting group, as proposed by the delegation of the Netherlands, had begun by considering paragraph 2; however, delegations soon realized that a discussion of paragraph 1 would help to resolve their differences on paragraph 2. They therefore proceeded with a simultaneous discussion of the two paragraphs, including subparagraphs (a) and (c) of paragraph 2. As a result, agreement had emerged on how to deal with paragraph 1 (see section O below) and on the reference to national laws and regulations in paragraph 2. The drafting group held two sets of informal negotiations on: (a) a "chapeau" of the article, coordinated by the delegation of France; and (b) subparagraphs (a) and (c), coordinated by the delegation of South Africa. The negotiations coordinated by the delegation of France resulted in widespread support for a text which, subject to the

approval of several delegations' Governments, would be proposed to the plenary at a later stage. The Chairman regretted that the latter negotiations did not result in a conclusive text.

80. The Chairman-Rapporteur, in view of the failure to arrive at a final text of article 12, suggested that the delegations of Canada, Chile, China, Cuba and Finland meet informally in order to draft a consolidated proposal for consideration by the drafting group.

G. Article 16

81. At its 3rd, 4th, 5th and 6th plenary meetings, on 14 and 15 October 1997, the Chairman-Rapporteur of the working group invited delegations to consider article 16.

82. The representative of Cuba stated that in her view, States Parties to the optional protocol should be responsible for expenditures incurred by its implementation. Otherwise, she could approve the text of article 16 as it stood as of the outcome of the first reading. The representative of Egypt shared her opinion.

83. The observer for Spain suggested inserting, in paragraph 1, the words "and through voluntary contributions" after "United Nations". The representative of the United States of America, while supporting the concept of voluntary contributions, said that they should not be mentioned in article 16.

84. The representative of Japan announced that he would support the financing of the Subcommittee from the regular budget of the United Nations and that his delegation would not insist upon the text in brackets. This was supported by the observers for Switzerland, the Association for the Prevention of Torture and Amnesty International and the representatives of Canada, Denmark, Italy, the Netherlands, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and Uruguay. The observer for Amnesty International noted that human rights work was an integral part of the mainstream work of the United Nations, that special funding could be uncertain and payment difficult to ensure, and that independence would be best guaranteed by regular budget funding. She recalled the problem of funding the Committee against Torture which eventually resulted in a change in funding from States Parties to the regular budget.

85. At the 4th plenary meeting, on 14 October 1997, paragraph 2 of article 16 was adopted without amendments (see annex I, article 15).

86. At the 5th plenary meeting, on 15 October 1997, the representatives of Cuba and Egypt stated that their delegations would join other delegations in supporting financing from the regular budget of the United Nations.

87. At the 6th plenary meeting, on 15 October 1997, with regard to paragraph 1 of article 16, the Chairman of the drafting group reported that the drafting group had decided to place a full stop after "United Nations" and to delete the bracketed text.

88. At the same meeting, paragraph 1 of article 16 was adopted (see annex I, article 15).

H. Article 16 bis

89. At its 3rd and 4th plenary meetings, on 14 October 1997, the Chairman-Rapporteur of the working group invited delegations to discuss article 16 bis.

90. The representative of the Netherlands proposed adding the phrase "as well as through the regular budget of the United Nations" to the end of paragraph 2 of article 16 bis.

91. This view was opposed by the representatives of Brazil, China, Cuba, the United States of America and the observer for Switzerland. The representative of Japan stated that the proposal was unclear and the representative of the United Kingdom felt that it would be hard to achieve agreement on the proposal.

92. The representative of France favoured separate management of voluntary funding. In that connection she referred to the comments made in paragraph 99 of document E/CN.4/1996/28.

93. The representative of the Netherlands proposed deleting the word "voluntary" from the second paragraph.

94. The representative of South Africa pointed out that a special fund would help developing countries, would not add to bureaucracy and would assist States to respond to the recommendations of the Subcommittee. The funding of the Subcommittee was a separate issue from the establishment of a special fund for assistance for the implementation of the recommendations of the Subcommittee by States Parties in need. The observers for Switzerland, Amnesty International and the Association for the Prevention of Torture and the representatives of Denmark, Italy and the United Kingdom of Great Britain and Northern Ireland made comments supporting this view.

95. At the 4th plenary meeting, article 16 bis was adopted without amendments (see annex I, article 16)

I. Article 17

96. At the 3rd and 4th plenary meetings, on 14 October 1997, the Chairman-Rapporteur of the working group invited delegations to discuss article 17.

97. The observer for Sweden referred to her Government's proposal, contained in document E/CN.4/1996/28 (para. 103), that the optional protocol could be open for ratification or accession by States other than those having ratified the Convention against Torture. The objective of the optional protocol was to enhance protection of persons from torture and ill-treatment. A number of international and regional conventions already contained a prohibition against torture and ill-treatment. In the optional protocol the working group was creating a new mechanism of a preventive nature - the Subcommittee - in order to promote improved implementation of this prohibition. The new optional protocol, by being opened to States not yet parties to the Convention against

Torture but under a legal obligation in regard to the prohibition against torture and ill-treatment, could facilitate, through the assistance of the Subcommittee, their accession to the Convention. It would be legally possible, although unusual, to open the optional protocol to States that were not parties to the Convention against Torture.

98. The delegations of Brazil, China, Denmark, Cuba, Egypt, France, the Russian Federation, Spain, Switzerland, the United Kingdom, the United States and Uruguay commented on this proposal, in particular on the advisability of requesting an opinion from the Office of the Legal Counsel of the United Nations and on the practical usefulness of adopting such a proposal.

99. The observers for the Association for the Prevention of Torture and the International Commission of Jurists raised concerns about opening up the optional protocol to non-States Parties to the Convention against Torture and considered that all steps should be taken to promote ratification of the Convention against Torture. The observer for Amnesty International echoed these views and suggested that the full implications of such a proposal needed to be considered.

100. At the 4th plenary meeting, taking into consideration the comments made by several delegations, the observer for Sweden withdrew her proposal. She noted that after the articles dealing with the relationship between the Subcommittee and the Committee against Torture had been finalized, the working group could, if it so wished, return to the question for further consideration.

101. At the same meeting, the working group adopted the text of article 17 without amendments (see annex I, article 17).

J. Article 18

102. At its 4th and 5th plenary meetings, on 14 and 15 October 1997, the Chairman-Rapporteur of the working group invited delegations to discuss article 18.

103. At the 4th plenary meeting, with respect to paragraphs 1 and 2, the representative of Cuba proposed that the optional protocol should enter into force when it had been ratified by 10 States Parties. The representatives of Argentina and Italy and the observers for Finland, Spain, Sweden and Switzerland expressed their support for this proposal. The observer for Amnesty International echoed this support, stating that a small number of members would allow the Subcommittee to develop its work and build experience and credibility and thus the important work of preventing torture would not be delayed. Some speakers pointed out that 10 ratifications were required for the entering into force of the two Optional Protocols to the International Covenant on Civil and Political Rights.

104. The representative of the United States of America opposed the proposal, arguing that a high number of ratifications should be required before the optional protocol would enter into force. This would ensure a high degree of

participation and would more easily attract financing. This view was supported by the representatives for Algeria and China. The representative of China suggested that the number of ratifications might be 20.

105. At the same meeting, the representative of the United States of America suggested that the figure could be decided upon completion of the draft, as core decisions had not yet been made. The observer for Australia shared this view.

106. At the 5th plenary meeting, the representative of the Czech Republic and the observer for the Syrian Arab Republic supported the proposal that the number of ratifications needed should be 10.

107. At the 5th plenary meeting, the representatives of Austria, Canada, Japan, the Netherlands, South Africa and the United Kingdom and the observer for Norway stated that they were flexible as to the number of ratifications required for the optional protocol to enter into force. The representatives of Austria and Italy and the observer for Switzerland, who was in favour of 10 ratifications, would, however, accept no number greater than 20. The observer for the International Commission of Jurists favoured a number between 10 and 20. The representative of the Netherlands stated that he favoured a low number, so as to ensure that the optional protocol would enter into force quickly. This view was shared by the representative of the Dominican Republic.

108. At the same meeting, after she had consulted informally with the delegations of Australia and China, the representative of Cuba modified her earlier position, stating that by setting the number of ratifications at 20, universal acceptance might be possible. This view was shared by the representatives of Denmark and Mexico and the observer for Australia.

109. With respect to paragraph 3, at the 4th and 5th plenary meetings, the representatives of Argentina, Austria, Canada, the Czech Republic, Germany, Italy, the Netherlands and the Russian Federation and the observers for Australia, Finland, Norway, Spain, Sweden and Switzerland and for Amnesty International were of the opinion that States Parties should not be entitled to make reservations in respect of the provisions of the optional protocol. In their view, reservations could disrupt the whole procedure and render the mechanism useless. The representative of the Netherlands suggested that an early conclusion to the drafting process might be possible if States Parties were given the opportunity of making declarations. The observers for the Association for the Prevention of Torture and the International Commission of Jurists, while preferring no reservations, felt that, as an alternative, no reservations should be made to core articles. The observer for Amnesty International stated that reservations would threaten the efficient functioning of the Subcommittee and that none should be permitted.

110. The representatives of Algeria, Brazil, China, Cuba, the Dominican Republic, Mexico and the United States of America and the observer for the Syrian Arab Republic expressed opposition to a prohibition on reservations of any kind. The representative of China stated that it should be possible to make reservations in accordance with the Vienna Convention on the Law of Treaties. The representative of the United States stated that his

delegation was cautious about prohibiting reservations which would not be of concern to a global body as a whole. The representative of South Africa, though favouring no reservations, was willing to accept reservations in the interest of reaching agreement.

111. At the 5th plenary meeting, the representative of the Netherlands suggested that delegations might wish to postpone making a decision. The representatives of Canada, Egypt, Italy, Japan and the United Kingdom shared this view.

112. The Chairman-Rapporteur regretted that no agreement had been reached on article 18 and therefore suggested that negotiations on article 18 should be deferred. It was so decided.

K. Article 18 bis

113. At the 5th plenary meeting, on 15 October 1997, the working group adopted article 18 bis, without amendments (see annex I, article 18).

L. Article 19

114. At the 5th plenary meeting, on 15 October 1997, the Chairman-Rapporteur of the working group opened the general discussion on article 19.

115. With respect to paragraph 2 of article 19, the representative of China stated that the bracketed words "the Committee against Torture" and "or the Committee against Torture" should be deleted. This view was shared by the representative of the Russian Federation.

116. The representative of Egypt stated that the text in brackets in paragraph 2 of article 19 should be maintained if there were to be a link between the Committee against Torture and the Subcommittee.

117. At the 6th plenary meeting, on 15 October 1997, the Chairman of the drafting group reported that the drafting group had decided that paragraph 1 would remain as submitted at the outcome of the first reading; paragraph 2 would be amended by deleting the two references to the Committee against Torture; and paragraph 3, proposed by the representative of Mexico, would be added.

118. Article 19, as amended, was adopted (see annex I, article 19).

M. Article 19 bis

119. At the 5th plenary meeting, on 15 October 1997, the Chairman-Rapporteur of the working group opened the general discussion on article 19 bis.

120. The representative of Mexico pointed out that the wording of article 19 bis was inconsistent with the wording of the Convention against Torture and suggested that the text of article 19 bis be amended accordingly.

121. At the 6th plenary meeting, on 15 October 1997, the Chairman of the drafting group reported that the drafting group had decided that paragraph 3 would remain as submitted at the outcome of the first reading.

122. Paragraph 3 of article 19 bis, was adopted (see annex I, article 20).

123. It was decided, as suggested by the Chairman-Rapporteur of the working group, that adoption of paragraphs 1 and 2 of article 19 bis be postponed until an agreement could be reached.

N. [Article 19 ter]

124. At the 5th plenary meeting, on 15 October 1997, the Chairman-Rapporteur of the working group opened the general discussion on [article 19 ter].

125. The representative of Japan stated that his delegation no longer insisted on the inclusion in the optional protocol of an article that would provide for the settlement of disputes between States Parties.

126. The representative of the Netherlands felt that it would be useful to have such an article although no text had been found. He suggested that the working group look at article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination for inspiration.

127. At the 6th plenary meeting, the representative of Cuba and the observer for Peru expressed the opinion that this article was not necessary.

128. The representative of the Netherlands remained interested in [article 19 ter], suggesting that it needed more substance and should not be discarded at this stage. The representative of the United States of America echoed this opinion, adding that the working group should not simply consider the settlement of conflicts between States but also between States and treaty bodies.

129. The representative of Cuba suggested that reference be made to article 30, paragraphs 1, 2 and 3, of the Convention against Torture when drafting this article.

130. There was a general feeling that more information on precedents was needed for a comprehensive examination of the article. The Secretariat was requested to obtain the legal opinion of the Legal Counsel of the United Nations, in particular in regard to settlement of disputes between a State Party and an international body such as the proposed Subcommittee.

O. Articles 20 and 20 bis

131. The representative of the Netherlands stated that more information on precedents was needed for a comprehensive examination of the articles.

132. It was pointed out that a text outlining the privileges and immunities provided to United Nations "experts on mission" was contained in paragraph 118 of E/CN.4/1996/WG.11/WP.1.

133. The observer for Peru expressed the view that article 20 bis was counterproductive as the immunities outlined were already sufficient.

134. The representative of Egypt stated that it might be useful to create a new text for article 20 which would incorporate the information contained in paragraph 118 of E/CN.4/1996/WG.11/WP.1. The observer for Sweden supported this position.

135. Consideration of articles 20 and 20 bis was postponed to allow for closer examination of legal opinion.

136. At the 7th plenary meeting, on 16 October 1997, the representative of the United States of America circulated a proposal on article 20. He provided the working group with the relevant existing regulations, including two sections of the Convention on Privileges and Immunities of the United Nations, and an explanation of the privileges and immunities, including their scope, when they apply and to whom they would apply.

137. The representative of China commented that the experts on mission should not enjoy the same privileges and immunities as the members of the Subcommittee and suggested postponing consideration of the article until agreement was reached on articles 10 and 11. These views were echoed by the representative of Cuba.

138. The delegations of the Netherlands and Uruguay formally proposed the suspension of discussion until a later stage. This proposal was supported by the working group.

139. At the 10th plenary meeting, on 22 October 1997, the working group resumed its consideration of articles 20 and 20 bis.

140. The representative of the United States of America presented a proposal co-sponsored by the representative of Egypt which was the result of informal consultations that had included the representative of China. The proposal, presented as one article with two paragraphs, was subsequently divided into two separate articles which restated existing treaty law with respect to experts on mission for the United Nations. The proposal was supported by the representatives of the Dominican Republic, Germany, and Italy and the observer for Costa Rica. The representatives of Cuba, Italy, and Uruguay proposed several amendments to the text.

141. The representative of France pointed out the need for members of the Subcommittee and the missions to be able to circumvent certain national regulations, for example visiting hours in prisons, in order to carry out their mandate. The representative of the Dominican Republic stated that it was a matter of scheduling and not a question of local regulations.

142. The representative of China was of the view that members of missions should be divided into three categories and should enjoy varying degrees of privileges and immunities. These categories were: members of the Subcommittee, who should enjoy the same privileges and immunities as delegations of States Members of the United Nations; experts, who should enjoy only necessary privileges and immunities according to their concrete needs;

and interpreters, who might be nationals of the country visited who should have some privileges only. She also favoured including a waiver of privileges and immunities in the text of the optional protocol. The representative of Egypt suggested wording of the article that included distinctions.

143. The representatives of Germany, Mexico and Uruguay and the observer for Costa Rica opposed dividing delegations on mission into sub-classes and the representative of the Dominican Republic questioned the practicality of making distinctions between members of delegations on mission with respect to privileges and immunities. The representative of Uruguay preferred that no reference be made to national legislation in the optional protocol. She considered the debate on the obligations of the members of the visiting delegation to be the other side of the problem, analysed in article 12, of the obligations of the State Party visited towards the delegation of the Subcommittee. If there was still a need to include a reference, she would prefer to have an article 20 with two paragraphs in which it could be stated, in accordance with the compromise formula agreed ad referendum for the "chapeau" of article 12, that without prejudice to its privileges and immunities and consistent with the provisions and purposes of the optional protocol, the delegation should respect the laws and regulations of the State visited.

144. At the 11th plenary meeting, on 22 October 1997, the representative of Chile stated that his delegation had no objection to the proposals made by the delegation of the United States of America and the proposed amendments made by the representative of Egypt, and that he found the representative of Uruguay's proposal interesting. The most important purpose of the article was to ensure the independence of missions. The representative of Canada preferred the representative of Uruguay's approach.

145. At the same meeting, the representative of the United States of America introduced a second proposal for articles 20 and 20 bis. He proposed to incorporate existing standards into the optional protocol, as opposed to creating new ones, and based his text on article VI, section 22, of the 1946 Convention on the Privileges and Immunities of the United Nations and article 6 of the Convention on the Safety of United Nations and Associated Personnel of 2 December 1994. This proposal was supported by the representatives of Denmark and the Netherlands and the observer for Sweden, although the representative of the Netherlands opposed the use of a reference to conduct. The representative of the United States added that the provisions should apply to all members of the mission regardless of nationality. This view was endorsed by the representative of Denmark and the observer for Sweden and opposed by the representative of China.

146. The observer for Sweden asked the representative of the United States, through the Chair, if immunity would cover meetings, for example, at United Nations Headquarters. The representative of the United States of America answered in the affirmative, suggesting that the drafting group could amend the text to make this clear.

147. The representative of Cuba would prefer to see the first sentence of the proposal for article 20 shortened and supported the inclusion of the reference to section 23 of the 1946 Convention. She further stated that immunity should be provided for the entire period of the mission.

148. At the 12th plenary meeting on 23 October 1997, the Chairman of the drafting group reported that the drafting group had agreed to the text of article 20 and additional article 21. With regard to the latter, the Chairman wished to explain the background for, and a summary of the deliberations on that article in the plenary, in the drafting group, as well as in informal consultations with many delegations.

149. She stated that some delegations felt that the content of additional article 21 (which ultimately became article 22) was independent of the outcome of article 12. Many other delegations, however, felt that the reference in article 21 with regard to respect for the laws and regulations of the visiting State being without prejudice to the provisions and purposes of the optional protocol was in fact greatly dependent on the specific liberties that were to be granted to the Subcommittee under article 12 and other related articles which the drafting group had not yet finalized. They had agreed to approve additional article 21 in plenary, but wished it to be reflected in the report that their approval of article 21 was closely linked to a satisfactory outcome of article 12. Although the drafting group had not yet reached the point where it could adopt the whole of article 12, there was general agreement that article 12 should be focused on the obligations of a State Party towards a visiting delegation. There was also general agreement to include a "chapeau" of article 12 in an annex (see annex III). Due to lack of time, article 12 could not be completed and would have to be examined next year.

150. The representative of Mexico did not share all the views expressed by the Chairman of the drafting group. In his opinion, new article 21 and article 12 had no special links. They were both part of the future optional protocol and he would have preferred the adoption of new article 21 ad referendum without commentary by the Chairman of the drafting group. The representative of China and the observer for the Syrian Arab Republic supported his statement.

151. The representative of Cuba stated that approval of new article 21 was not dependent on article 12. It would be difficult for her delegation to reopen articles approved without commentary. If that article were to be reopened and that method of work followed, her delegation would reserve the right to reopen other approved articles.

152. The representative of Egypt supported this view and considered that a link between article 21 and article 12 would be a way to reflect the concerns of some delegations. Nevertheless, he stressed that in fact all articles of the optional protocol werere linked and that nothing was finally agreed until everything was finalized. However, Egypt considered article 21 fundamental to ensure the necessary balance between the need for an efficient Subcommittee mechanism on the one hand and the requirements of State sovereignty on the other hand.

153. The representative of Uruguay supported the summary given by the Chairman of the drafting group. Her delegation would carefully follow the future examination not only of article 12 but also of articles 1 and 8, the concern of her delegation being not to restrict the Subcommittee unduly in the preformance of its tasks and functions. The representatives of Chile, Denmark and the Netherlands and the observer for Switzerland echoed these views.

154. Article 20 and additional article 21, were adopted (see annex I, articles 21 and 22).

155. After the adoption of article 20 and additional article 21 the representative of China stated that she regretted that in article 20, the position of the delegation of China regarding different treatment of members of the Subcommittee, experts, and the nationals participating in a mission to a State Party had not found a place in the text. Such a distinction should be made and she explicitly made a reservation on this issue.

P. Article 21

156. At the 6th plenary meeting, on 15 October 1997, the working group adopted article 21 without amendments (see annex I, article 23).

III. FUTURE WORK

157. At its 13th plenary meeting, on 24 October 1997, the working group discussed the issue of how its work could be best continued. There was general agreement that much progress had been made during the working group's sixth session and that a continuation of the work in the same spirit offered the prospect of the completion of a final text which could be of a great value in the field of the prevention of torture.

158. The working group considered that if it were to be authorized to meet for a further session of two weeks after the next session of the Commission, there would be a reasonable expectation that it could complete consideration of the remaining articles contained in annex I of document E/CN.4/1996/28 (articles 12, 12 bis, 13, 14, 15, 18, 18 bis, 19 bis, paragraphs 1 and 2, and 19 ter), annex II of document E/CN.4/1997/33 (articles 1 and 8) and a "chapeau" of article 12 (annex III to the present report). The final numbering and placement of articles would be decided when the text of the entire draft optional protocol had been agreed.

IV. ADOPTION OF THE REPORT

159. The report of the working group was adopted at the 14th plenary meeting, on ... March/April 1998. The addendum to the present reports contains details of the adoption.

Annex I

TEXT OF THE ARTICLES WHICH CONSTITUTE THE OUTCOME OF THE SECOND READING AT THE FIFTH AND SIXTH SESSION a/

Article 2 b/

There shall be established a Subcommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture which shall carry out the functions laid down in the present Protocol (hereinafter referred to as the Subcommittee); the Subcommittee shall be responsible for organizing missions to the States Parties to the present Protocol for the purposes stated in article 1.

Article 3

1. In the application of this Protocol the Subcommittee and the State Party concerned shall cooperate with each other.

2. The Subcommittee shall conduct its work within the framework of the Charter of the United Nations and be guided by the purposes and principles therein.

3. The Subcommittee shall also be guided by the principles of confidentiality, impartiality, universality and objectivity.

Article 4

1. The Subcommittee shall consist of 10 members. After the fiftieth accession to the present Protocol, the number of members of the Subcommittee shall increase to 25.

2. The members of the Subcommittee shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular in criminal law, prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty or in the field of human rights.

3. No two members of the Subcommittee may be nationals of the same State.

4. The members of the Subcommittee shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee effectively.

Article 5

1. Each State Party may nominate, in accordance with paragraph 2, up to two candidates possessing the qualifications and meeting the requirements set out in article 4, and in doing so shall provide detailed information on the qualifications of the nominees.

2. (a) Nominees of the Subcommittee shall have the nationality of a State Party to the present Protocol.

(b) At least one of the two candidates shall have the nationality of the nominating State Party.

(c) Not more than two nationals of a State Party shall be nominated.

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the written consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them.

Article 6

The members of the Subcommittee shall be elected in the following manner:

1. Elections of the members of the Subcommittee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. The initial election shall be held no later than six months after the date of entry into force of the present Protocol.

3. The States Parties shall elect the members of the Subcommittee by secret ballot.

4. In the election of the members of the Subcommittee, primary consideration shall be given to the fulfilment of the requirements and criteria of article 4. Furthermore, due consideration shall be given to a proper balance among the various fields of competence referred to in article 4, to equitable geographical distribution of membership and to the representation of different forms of civilization and legal systems of the States Parties.

5. Consideration shall also be given to balanced representation of women and men on the basis of the principles of equality and non-discrimination.

6*. If, during the election process, two nationals of a State Party have become eligible to serve as members of the Subcommittee, the membership of the Subcommittee shall be resolved in the following manner in conformity with article 4, paragraph 3:

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* It was proposed that paragraph 6 be embodied in the rules of procedure of meetings of the States Parties, should they be elaborated. Another proposal was that paragraph 6 be annexed to the present Protocol.

(a) The candidate receiving the higher number of votes shall serve as the member of the Subcommittee.

(b) Where the nationals have received the same number of votes, the following procedure applies:

(i) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee;

(ii) Where both nationals have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall be the member;

(iii) Where neither national has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which national shall be the member.

Article 7

If a member of the Subcommittee dies or resigns or for any other cause can no longer perform the member's Subcommittee duties, the State Party which nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 4, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9 [6]

The members of the Subcommittee shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these members shall be chosen by lot by the Chairman of the meeting referred to in article 6, paragraph 1.

Article 10 [7]

1. The Subcommittee shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Half plus one members shall constitute a quorum;

(b) Decisions of the Subcommittee shall be made by a majority vote of the members present;

(c) The Subcommittee shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee. After its initial meeting, the Subcommittee shall meet at such times as shall be provided in its rules of procedure.

Article 11 [9]

1. The Subcommittee may decide to postpone a mission to a State Party if the State Party concerned has agreed to a scheduled visit to its territory by the Committee against Torture, pursuant to article 20, paragraph 3 of the Convention. The dates of the rescheduled mission shall be determined taking into account the provisions of articles 1 and 8.

2. The Subcommittee, while respecting the principles set out in article 3, is encouraged to cooperate for the prevention of torture in general with the relevant United Nations organs and mechanisms as well as international, regional and national institutions or organizations working towards strengthening the protection of persons from torture and other cruel, inhuman or degrading treatment or punishment.

3. If, on the basis of a regional convention, a system of visits to places of detention similar to the one under the present Protocol is in force for a State Party, the Subcommittee shall still be responsible for missions to such a State Party under this Protocol, assuring its universal application. However, the Subcommittee and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to the efficient promotion of the objectives of this Protocol, including on the matter of duplication of work.

Such cooperation may not exempt the States Parties belonging also to such conventions from cooperating fully with the Subcommittee.

4. The provisions of the present Protocol do not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1997, or the possibility for any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 13 [consolidated 10 and 11]

1. Missions should be carried out by at least two members of the Subcommittee, assisted by interpreters if necessary. If needed, the Subcommittee may be assisted by experts.

2. The Subcommittee shall upon deciding the composition of the mission take into account the particular objectives of the mission.

3. (a) The Subcommittee shall consult confidentially the State Party concerned, in particular regarding the composition and size of the mission other than with regard to the participating members of the Subcommittee.

(b) The State Party concerned may oppose the inclusion of an expert or interpreter in the mission to the territory under its jurisdiction, whereupon the Subcommittee shall propose alternatives.

4. No member of the delegation, with the exception of interpreters, may be a national of the State to be visited. The conduct of the delegation and of all of its members shall be bound by the criteria of independence, impartiality, objectivity and confidentiality.

5. Experts shall be subordinate to and assist the Subcommittee. With regard to a mission, they shall in all respects act on the instruction of and under the authority of the Subcommittee. They shall in no case undertake any missions by themselves under the present Protocol.

Article 14

1. In order to establish a list of experts available for the Subcommittee, each State Party may propose no more than five national experts, qualified in the areas covered by the present Protocol, giving due consideration to gender balance.

2. As needed, the United Nations and specialized agencies may also propose experts to be included on that list.

3. The Subcommittee will annually notify the States Parties of the comprehensive list of experts.

4. In special cases, where specific knowledge or experience is required for a particular mission, and such knowledge or experience is not available on the list of experts, the Subcommittee may include in a mission an expert who is not on the list.

5. In selecting experts for a mission, the Subcommittee shall give primary consideration to the professional knowledge and skills required, taking into account regional and gender balance.

Article 15 [16]

1. The expenditure incurred by the implementation of the present Protocol, including missions, shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee under the present Protocol.

Article 16 [16 bis]

1. A Special Fund shall be set up in accordance with General Assembly procedures, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee to a State Party expressing the need for additional assistance for its ongoing efforts to improve the protection of persons deprived of their liberty.

2. This Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations as well as other private or public entities.

Article 17 [17]

1. The present Protocol is open for signature by any State which has signed the Convention.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 18 [18 bis]

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 19 [19]

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation which occurs prior to the date at which the denunciation becomes effective, or to the actions that the Subcommittee has decided or may decide to adopt with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Subcommittee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of the State Party becomes effective, the Subcommittee shall not commence consideration of any new matter regarding that State.

Article 20 [19 bis]

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 21 [20]

Members of the Subcommittee and of missions authorized under the present Protocol shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. In particular, they shall be accorded the privileges and immunities specified in section 22 of the Convention on Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 22

In the conduct of missions, all members shall without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

(a) Respect the laws and regulations of the visited State; and

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 23 [21]

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

Notes

a/ The number in brackets refers to the number of the article in the first-reading text (E/CN.4/1996/28, annex I).

b/ There was a divergence of views in the working group as to the relationship between the new body to be established and the Committee against Torture. A number of delegations supported the view that the new body should be a Subcommittee of the Committee against Torture, while some delegations proposed that it should be a body separate from the Committee against Torture.

Annex II

TEXT OF THE ARTICLES WHICH CONSTITUTE THE BASIS FOR FUTURE WORK a/

Article 1

1. A State Party to the present Protocol shall permit visits in accordance with the Protocol to any place in any territory under its jurisdiction where persons deprived of their liberty by a public authority or at its instigation or with its consent or acquiescence are held or may be held.

2. The object of the visits shall be to examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from, and to suggesting measures for the prevention of, torture and other cruel, inhuman or degrading treatment or punishment in accordance with applicable international law and relevant international standards.

Article 8

1. The Subcommittee shall establish, on the basis of a transparent and impartial procedure, a programme of regular missions to each State Party. It shall also undertake such other missions, including for the purposes of follow-up, as appear to it to be required in the circumstances with a view to furthering the aims of the present Protocol.

2. In accordance with the principles set out in article 3, the Subcommittee shall send a written notification to the Government of the State Party concerned of its intention to organize a mission, followed by a list of places to be visited and the composition of the delegation. The Subcommittee may also visit other places as needed during its mission.

3. Before a mission is carried out, the Subcommittee and the State Party concerned shall, if either of them so requests, enter into consultations with a view to agreeing without delay on the practical arrangements for the mission. Such consultations on the practical arrangements for the mission may not include negotiations on the obligations of a State Party under articles 1 and 12.

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a/ As contained in document E/CN.4/1997/33, annex II.

Annex III

TEXT OF A "CHAPEAU" OF ARTICLE 12

2. The State Party within whose jurisdiction a mission is to take place or is being carried out shall provide the mission with all the facilities necessary for the proper fulfilment of its tasks and promote the full cooperation of all competent authorities. In particular, the State Party shall provide the mission in accordance with national laws and regulations consistent with the provisions and purposes of the present Protocol with the following: